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21 Benjamin J.R.; and William A.J.M.

22 **UNITED STATES DISTRICT COURT**

23 **NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION**

24 EDUARDO I.T., EDWIN E.I.I., Ignacio P.G.,
25 Leonel Y.P.G., a minor child, Benjamin J.R.,
and William A.J.M.

Case No. 4:22-cv-05333-DMR

26 **DECLARATION OF VICTORIA
27 PETTY IN SUPPORT OF
28 PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO
TRANSFER AND MOTION TO
DISMISS**

Date: January 26, 2023

Time:

Dept:

Judge: Hon. Donna M. Ryu

Trial Date: Not set

29 UNITED STATES OF AMERICA

30 Defendant.

31 PETTY DECLARATION ISO PLAINTIFFS' OPPOSITION TO DEFENDANT'S
32 MOTION TO TRANSFER AND MOTION TO DISMISS

1 I, Victoria Petty, declare as follows:

2 1. I am an active member of the California State Bar and this Court, and I am an
3 Immigrant Justice Fellow at Lawyer's Committee for Civil Rights of the San Francisco Bay Area,
4 counsel of record for Plaintiffs Eduardo I.T.; Edwin E.I.I.; Ignacio P.G.; Leonel Y.P.G., a minor
5 child; Benjamin J.R.; and William A.J.M (collectively, "Plaintiffs").

6 2. I submit this declaration in support of Plaintiffs' Opposition to Defendant's Motion to
7 Transfer and Motion to Dismiss in the above-captioned action.

8 3. The facts set forth herein are known to me personally and, if called as a witness, I
9 could and would testify completely thereto.

10 4. Plaintiffs' pro bono counsel reside and work in this District and have no offices in
11 Arizona. Plaintiffs' pro bono counsel's firms—Lawyers' Committee for Civil Rights of the San
12 Francisco Bay Area and Pillsbury Winthrop Shaw Pittman LLP—have no offices in Arizona.

13 5. In lawsuits similar to the above-captioned action, including one in this District, the
14 Government has demanded discovery from educators, counselors, medical providers, and mental
15 health professionals who interacted with the plaintiffs after their release from custody.

16 6. Attached hereto as **Exhibit 1** is a true and correct copy of the complaint filed in *D.A., et al. v. United States et al.*, No. 1:20-cv-03082 in the United States District Court for the Northern District of Illinois on May 22, 2020. The basis for venue is alleged in paragraph 14 therein.

17 7. District courts adjudicating FTCA claims arising out the family separation policy
18 have uniformly rejected the Government's subject matter jurisdiction arguments in fourteen out of
19 fourteen cases thus far and transfer of venue arguments where venue was based upon plaintiffs'
20 residence in four out of four cases thus far. Attached hereto as **Exhibits 2-16** are true and correct
21 copies of each of these orders.

22 8. Attached hereto as **Exhibit 2** is a true and correct copy of the March 30, 2020, order
23 denying the Government's motion to dismiss for failure to state a claim and lack of subject matter
24 jurisdiction in *C.M. v. United States*, No. CV-19-05217-PHX-SRB, 2020 WL 1698191 (D. Ariz.).

1 Mar. 30, 2020), motion to certify appeal denied, No. CV-19-05217-PHX-SRB, 2020 WL 5232560
 2 (D. Ariz. July 6, 2020).

3 9. Attached hereto as **Exhibit 3** is a true and correct copy of the July 7, 2020, order
 4 denying the Government's motion to dismiss for lack of subject matter jurisdiction and failure to
 5 state a claim in *A.P.F. v. United States*, 492 F. Supp. 3d 989 (D. Ariz. 2020).

6 10. Attached hereto as **Exhibit 4** is a true and correct copy of the docket in *R.Y.M.R. v.*
 7 *United States*, No. 1:20-cv-23598-KMW, Dkt. 23 (Feb. 5, 2021). The February 5, 2021, paperless
 8 order denying the Government's motion to dismiss for lack of subject matter jurisdiction is located
 9 on page 21 therein.

10 11. Attached hereto as **Exhibit 5** is a true and correct copy of the April 27, 2021, order
 11 denying the Government's motion to dismiss for failure to state a claim and lack of jurisdiction in
 12 *Nunez Eceda v. United States*, No. 220CV10793VAPGJSX, 2021 WL 4895748 (C.D. Cal. Apr. 27,
 13 2021).

14 12. Attached hereto as **Exhibit 6** is a true and correct copy of the March 31, 2022, order
 15 denying the Government's motion to dismiss for lack of jurisdiction and granting in part as to two of
 16 five plaintiffs for improper venue in *A.I.I.L., et al. v. Sessions*, No. CV-19-00481-TUC-JCH, 2022
 17 WL 992543 (D. Ariz. Mar. 31, 2022).

18 13. Attached hereto as **Exhibit 7** is a true and correct copy of the May 10, 2022, order
 19 denying the Government's motion to transfer venue or motion to dismiss for lack of jurisdiction in
 20 *P.G. v. United States*, No. 4:21-CV-04457-KAW, 2022 WL 3024319 (N.D. Cal. May 10, 2022).

21 14. Attached hereto as **Exhibit 8** is a true and correct copy of the June 3, 2022, order
 22 denying the Government's motion to transfer in *E.L.A., et al. v. United States*, No. 2:20-CV-1524-
 23 RAJ, 2022 WL 2046135 (W.D. Wash. June 3, 2022).

24 15. Attached hereto as **Exhibit 9** is a true and correct copy of the June 3, 2022, order
 25 denying the Government's motion to dismiss for lack of jurisdiction in part in *D.J.C.V., et al. v.*
 26 *United States*, No. 20 CIV. 5747 (PAE), 2022 WL 1912254 (S.D.N.Y. June 3, 2022).

1 16. Attached hereto as **Exhibit 10** is a true and correct copy of the July 12, 2022, order
 2 denying the Government's motion to transfer venue and motion to dismiss for lack of subject matter
 3 jurisdiction in *A.F.P., et al. v. United States*, No. 121CV00780DADEPG, 2022 WL 2704570 (E.D.
 4 Cal. July 12, 2022).

5 17. Attached hereto as **Exhibit 11** is a true and correct copy of the July 22, 2022, order
 6 denying the Government's motion to dismiss for lack of jurisdiction "as it relates to the tortious
 7 misconduct of individual government employees" in *F.R. v. United States*, No. CV-21-00339-PHX-
 8 DLR, 2022 WL 2905040 (D. Ariz. July 22, 2022).

9 18. Attached hereto as **Exhibit 12** is a true and correct copy of the September 16, 2022,
 10 order denying the Government's motion to transfer and motion to dismiss for lack of subject matter
 11 jurisdiction in *A.E.S.E., et al. v. United States*, No. 21-CV-0569 RB-GBW, 2022 WL 4289930
 12 (D.N.M. Sept. 16, 2022).

13 19. Attached hereto as **Exhibit 13** is a true and correct copy of the September 30, 2022
 14 order denying the Government's motion to dismiss on the basis of lack of subject matter jurisdiction
 15 in *B.A.D.J. v. United States*, No. CV-21-00215-PHX-SMB, 2022 WL 11631016 (D. Ariz. Sept. 30,
 16 2022).

17 20. Attached hereto as **Exhibit 14** is a true and correct copy of the October 20, 2022,
 18 order denying the Government's motion to dismiss for lack of jurisdiction in *E.S.M. v. United States*,
 19 No. CV-21-00029-TUC-JAS, 2022 WL 11729644 (D. Ariz. Oct. 20, 2022).

20 21. Attached hereto as **Exhibit 15** is a true and correct copy of the November 8, 2022,
 21 order denying the Government's motion to dismiss for lack of jurisdiction in *E.C.B., et al. v. United*
 22 *States*, No. 2:22-cv-00915-CDB, Dkt. 24 (Nov. 8, 2022).

23 22. Attached hereto as **Exhibit 16** is a true and correct copy of the November 14, 2022,
 24 order denying the Government's motion to dismiss for lack of jurisdiction in *Fuentes-Ortega v.*
 25 *United States*, No. CV-22-00449-PHX-DGC, 2022 WL 16924223 (D. Ariz. Nov. 14, 2022).

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1 I declare under penalty of perjury that the foregoing is true and correct.
2 Executed on December 22, 2022, at Montrose, California.
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5 */s/ Victoria Petty* _____
6 Victoria Petty
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9 The undersigned attests that concurrence in the filing of this declaration has been obtained from all
10 signatories. Executed this 22nd day of December, 2022.
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13 */s/ Dustin Chase-Woods* _____
14 DUSTIN CHASE-WOODS
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